

**INTERNATIONAL  
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ON CIVIL AND  
POLITICAL RIGHTS**



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SUMMARY RECORD OF THE 258TH MEETING

Held at the Palais des Nations, Geneva,  
on Tuesday, 28 October 1980, at 3 p.m.

Chairman: Sir Vincent EVANS

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Covenant (continued)

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Italy (CCPR/C/6/Add.4) (continued)

1. Mr. TOMUSCHAT said he considered the Report by Italy to be one of the best ever submitted to the Committee. By consulting the summary records, its authors seem to have identified those points on which the Committee wished to have information, and they had referred not only to the relevant statutes but also to decisions handed down by courts in important cases. He wished, however, to put a number of questions.
2. The third subparagraph of paragraph 5 of the Report stated that the Covenant had been incorporated into Italian domestic law and had become a law of the State. That statement was not entirely accurate, since the Covenant continued to be an international instrument which should be interpreted in conformity with the rules of the Vienna Convention on the Law of Treaties. When seeking specific solutions to specific problems, Governments and tribunals should take into account the interpretations of the Committee, since it bore the main responsibility for synthesizing interpretations emanating from different parts of the world, as a forum in which replies were collected so that they could be co-ordinated and harmonized.
3. He noted that the fourth subparagraph of paragraph 5 of the Report stated that, in the event of a conflict with the corresponding provision of domestic law, it might be assumed that the court would tend to apply the Covenant. That statement seemed to indicate that the rules governing the relations between domestic law and international instruments incorporated into domestic law were not entirely clear. A distinction should apparently be made between earlier laws and subsequent laws. The Italian courts would certainly decide that the Covenant took precedence over an earlier law but they might be prevailed upon to decide that, in a case of conflict, a subsequent law took precedence over the Covenant. He would like to know whether there was a general ruling in Italy under which domestic legislation was to be interpreted in accordance with the international obligations contracted by Italy. It was often not enough to incorporate the Covenant into domestic legislation: a national law was required to organize the implementation of the Covenant and provide for remedies.
4. The last subparagraph of paragraph 4 of the Report stated that the administrative courts were empowered to protect the legitimate interests of citizens vis-à-vis the public administration. He wondered what was the position in respect of the rights and guarantees enshrined in the Covenant, which were rights and not just interests. Some clarifications seemed necessary on that issue. Moreover, paragraph 13 of the Report mentioned only the Constitutional Court and the criminal courts, which were obviously not in a position to adjudicate on all issues bearing on the Covenant. In the event that a person was refused a passport, forbidden to leave the country or deprived of his nationality, he would like to know whether there was a remedy and what organ would adjudicate.
5. The third subparagraph of paragraph 57 of the Report stated that aliens might be expelled on grounds of public security by order of the Minister of the Interior. He asked whether the decision of the Minister of the Interior could be challenged before an administrative court or before the Council of State.
6. With regard to article 17 of the Covenant, the Report (paragraph 72) mentioned Decree-Law No. 50 of 11 February 1948 which required individuals who had a

foreigner as a guest in their homes or personally employed a foreigner to furnish personal particulars to the local police. That provision apparently applied even if an individual had a foreign guest for only one night. He wondered whether that kind of provision was in keeping with those of article 17 of the Covenant, what the justification was for such surveillance, whether the revision of the law had been concluded and whether there were new provisions.

7. Articles 17 and 18 of the Italian Constitution indicated that the right of peaceful assembly and freedom of association, set forth in articles 21 and 22 of the Covenant, were granted to citizens only, and a deliberate distinction appeared to have been drawn between the rights which were granted to citizens and those which were granted to everyone. The Covenant, however, granted those freedoms to everyone and not merely to the citizens of the country. Information was needed on the way in which articles 17 and 18 of the Constitution were interpreted and applied in order to ascertain whether aliens enjoyed the right of assembly and freedom of association under Italian legislation. If the Constitutional Court had abolished those restrictions, he would like to be informed of the symbol number and date of its judgements.

8. The provisions of articles 10 and 26 of the Italian Constitution, concerning the non-admissibility of extradition for aliens and for citizens accused of political offences (second subparagraph of paragraph 27 of the Report), raised an issue bound up with article 20 of the Covenant. Such provisions were justified in the case of purely political offences, but they were not very convincing in the event of a murder for political reasons. He would like to know how Italian law defined a political offence. He recalled that article 6 of the Covenant stated that every human being had the inherent right to life, and that that right should be protected by law. He asked whether, if Italy refused to extradite a person charged with murder for political reasons, that person would be tried in Italy.

9. As far as the provisions applicable to the maintenance of order were concerned, he thought that it would be useful for the Committee to have the text of Law No. 152 of 22 May 1975 and that of the Decree of December 1979.

10. In paragraphs 25 and 26 of the Report, he noted, in connection with article 6 of the Covenant, that the death penalty had been abolished in Italy, except in cases prescribed by the military law of war and that executions were deferred in the case of pregnant women. He wondered whether that text meant that women could form part of the military personnel or that civilians could be tried by a military court in wartime. He also endorsed the questions already put concerning the application of the death penalty to persons guilty of treason, espionage or cowardice, since he wondered whether those crimes fell within the category of "the most serious crimes" for which article 6 of the Covenant authorized the death penalty.

11. Paragraph 33 of the report specified that article 53 of the Penal Code governed the use of arms by public officials. He would like to see the text of that article and to know whether its provisions had been supplemented by instructions given to the police forces, the more so since there seemed to be a need for such instructions.

12. The second subparagraph of paragraph 37 of the report dealt with cases of forced labour which article 8 of the Covenant did not prohibit and whose prohibition was not included among the human rights protected by the Covenant. That statement contained a legal inaccuracy, since the Covenant prescribed all forms of forced labour. The Covenant did not seem to allow persons to be subjected to forced labour because their antisocial behaviour was particularly dangerous for the community (second subparagraph of paragraph 37 of the Report). The first two subparagraphs of paragraph 38 of the Report also required explanation,

since the application of the penalties indicated in the second subparagraph of that paragraph did not appear to take into account the individual situations of those who were subjected to them.

13. With regard to article 9 of the Covenant, he endorsed the questions that had been asked concerning the length of pre-trial detention and asked whether the provisions regulating it were in conformity with article 14 of the Covenant, which stated that everyone charged with a criminal offence should have the right to be presumed innocent until proved guilty according to law. The fact that Italian legislation did not provide for compensation in the event of unlawful pre-trial detention also required explanations.

14. Article 10 of the Covenant required that all persons deprived of their liberty should be treated with humanity and with respect for the inherent dignity of the human person. He would like to know about the kind of training members of the penitentiary services received. In so far as the conditions of detention depended on the financial resources which the community allocated to prisons, he would like to know whether Italian penitentiary institutions had been improved recently and the percentage of the State budget assigned to their maintenance and improvement.

15. The third subparagraph of paragraph 55 of the Report indicated that Law No. 1423 of 27 December 1976, which was of relevance to article 12 of the Covenant, provided for preventive measures against persons who constituted a social threat to security and public morality. He would like to know what authorities determined whether a person constituted such a threat, what legal criteria formed the basis of a decision of that kind, whether those measures could be challenged and before which body. They were particularly serious since, according to subparagraph (d) of paragraph 102 of the Report, persons subjected to supervision, local banishment or forced residence, lost certain important rights.

16. In connection with article 18 of the Covenant, he noted from the second subparagraph of paragraph 75 of the Report that equal rights were beginning to be granted to all churches in Italy. However, the fact of granting preferential treatment to a particular church did not violate article 18 of the Covenant, provided that such preferential treatment did not have negative effects on the other religious communities.

17. Paragraph 79 of the report, relating to article 19 of the Covenant, had been omitted in the English version. Paragraph 81, however, indicated that the Penal Code prescribed restrictions on freedom of expression in cases of slander of the Republic. He would like to know how slander of the Republic was defined. General formulas could easily give rise to abuses, and it would be better to replace them by provisions which punished specific threats directed against an institution.

18. With regard to article 25 of the Covenant, he noted, from article 57 of the Italian Constitution, that Molise had two senators and the Valle d'Aosta one only, whereas no region might have less than seven senators. He wondered whether the number of senators for Molise and Valle d'Aosta was conceived as a privilege granted to minorities or whether it constituted an upper limit.

19. In connection with article 40, paragraph 4 of the Covenant, it had been proposed that an analysis should be published of all the questions put and all the answers received when reports were considered. That would be very useful, but the Secretariat apparently lacked the staff to carry out such a task. The problem might be raised in the Third and Fifth Committees of the General Assembly, on the basis of article 36 of the Covenant for, even though compromises might prove necessary, the Committee should not be prevented from effectively performing its functions. The Secretary-General and the General Assembly should be aware of their obligations under article 36 of the Covenant.

20. Mr. KOULISHEV said that Italy's report followed the Committee's guidelines and testified eloquently to the serious approach of the Government of Italy to the fulfilment of its obligations under article 40 of the Covenant. Further evidence of that attitude was its establishment of an Interministerial Committee on Human Rights, whose work was certainly not unrelated to the quality of the report.

21. Human rights in Italy were protected by a number of solid and commendable constitutional provisions. He disagreed, however, with some of the statements in part I of the Report, containing general remarks, and in the final considerations section, because the Committee was not competent to express an opinion on the advisability of stricter international control in the field of human rights, as advocated in paragraph 6 of the report, or to undertake a general evaluation of the world situation in that field, as proposed in paragraph 115.

22. He was particularly appreciative of the inclusion in the report (pp. 8-10) of specific information on the implementation of article 1 of the Covenant, regarding which the reports of States were often silent, and noted Italy's position regarding some of the situations in which violations of the right of peoples to self-determination were the most flagrant. In that connection, he would like to know what Italy's position was with respect to United Nations resolutions on relations with the racist régime of South Africa and endorsed Mr. Graefrath's question regarding the country's relations with the representatives of the Palestinian people.

23. As for the status of the Covenant in domestic legislation, the situation was clear, although the problem was not regulated directly by the Constitution, whose article 10, paragraph 1 obviously did not refer to international treaties. The Report (paragraph 5) stated that after ratification by Parliament, the Covenant "was ... incorporated into Italian domestic law and became a law of the State which any citizen may invoke before the judiciary". It would be useful, however, to know how some provisions of the Covenant had been implemented in the domestic legal system where they were not directly applicable, i.e. when they required machinery which had to be established by the law. That problem was not examined in the Report. He would also like to know what solution was adopted when a law enacted after the ratification of the Covenant proved to be in violation of it, and whether the Constitutional Court was competent or legal precedents existed.

24. As for the observation made in paragraph 11 of the Report that Italian legislation went beyond article 2 of the Covenant by ensuring respect for the rights of all individuals on Italian territory and not only of Italian citizens, he pointed out that article 2 of the Covenant adopted the same approach in that it prescribed that the rights recognized in the Pact should be respected and ensured to all individuals within the territory of each State party "and subject to its jurisdiction".

25. In connection with article 3 of the Covenant (pp. 13-15 of the Report), he welcomed the considerable legislative progress that had been made in the past few years in promoting equality between men and women, and greatly appreciated the statistical information provided in the Report on the participation of women in the economic, political and social life of the country.

26. In connection with article 4 of the Covenant (pp. 16 and 17), he recalled that paragraph 2 of that provision excluded any derogation from certain specified rights and noted that the Italian Constitution provided that, in the event of war or

of the proclamation of a state of public emergency, the exercise of the rights guaranteed in it, apart from the right to life, could be temporarily suspended. The same possibility was mentioned in paragraph 50 (p. 32), and the question arose as to whether it was in keeping with article 4 of the Covenant.

27. The application of article 4, paragraph 3 and article 14, paragraph 3 of the Covenant seemed to present some difficulties. The Italian Government recognized in its Report (pp. 27-31 and 37-39) that the length of pre-trial detention in custody was sometimes excessive and that, in certain difficult cases, the maximum time-limits had often been exceeded. It would be useful to know in that connection what progress had been made on the projects for reform of the Penal Code and the Code of Penal Procedure mentioned in paragraphs 46 and 63 of the Report for the sake of expediting legal proceedings.

28. He noted in paragraph 48 of the report that the Italian legislation covering article 9, paragraph 5 of the Covenant provided for compensation only in the case of judicial error, whereas the said paragraph was considerably broader in its provisions and established a right to compensation for any unlawful arrest or detention. The acknowledged fact of very long periods of pre-trial detention in custody made that aspect of the question particularly important.

29. In connection with article 10 of the Covenant (pp. 31-34), he pointed out that the right to absolutely impartial treatment without discrimination based on nationality, race, political and social status, etc., mentioned in paragraph 50 of the Report, was not quite the same as the right of all persons deprived of their liberty to be "treated with humanity and with respect for the inherent dignity of the human person" as provided for in article 10, paragraph 1 of the Covenant.

30. As for article 18 (pp. 43-47 of the report), he failed to understand why there should be a general tax to subsidize the Italian clergy. He would like to know whether the revenue from that tax benefited the clergy of all religions or only the Catholic clergy. While not unaware of the traditional role of the Catholic Church in Italy, he would like to obtain some additional information on that point and, more specifically, to know whether it was possible for a person professing no religion to be obliged to pay a tax designed to subsidize the clergy.

31. In connection with article 20 of the Covenant (pp. 47 and 48 of the report), he noted that article 11 of the Constitution did not fully meet the requirements of paragraph 5 of that article, which specifically provided that propaganda for war was to be prohibited.

32. As for article 22 (pp. 49-51 of the report), he would like to know what associations were prohibited by law because the comments on that point were not clear enough.

33. In connection with article 25 of the Covenant (pp. 56-59 of the report), he said he had noted the great difference between the voting age and the age of eligibility for election to either the Chamber of Deputies and the Senate, and would like the Italian delegation to explain the reasons for it.

34. In conclusion, he noted with satisfaction that the Italian Constitution provided two direct democratic procedures applicable to human rights: that of the popular referendum and that of the introduction of parliamentary bills by popular initiative. He would like to know whether there were any cases of those procedures being employed in order to enable laws concerning human rights to be adopted.

35. Mr. PRADO VALLEJO said that Italy's report was one of the best the Committee had ever received. It was clear, comprehensive and in keeping with the Committee's guidelines. The particularly co-operative attitude of the Government of Italy was fully within the Italian and Roman tradition, noted for its outstanding contribution to universal law and, more particularly, to the law of Latin American societies.

36. Nevertheless, none of the world's legal systems was perfect in its protection of human rights. Each had its gaps, as the Committee's experience had shown. He therefore associated himself with most of the questions already asked by the various members of the Committee.

37. In connection with article 1 of the Covenant (pages 8 to 10 of the report), he noted that Italy favoured a peaceful transition in Namibia from unlawful occupation to sovereignty. He strongly doubted that such a development was possible and would like the Italian delegation to explain its Government's views on the matter as well as the specific measures taken to support the legitimate aspiration of the Palestinian people to a free and independent homeland.

38. In connection with article 3 of the Covenant (pages 13 to 15 of the report), he would like to know what was the nature of the de facto discrimination against women mentioned in the Report and what specific problems Italy had encountered in that field.

39. As for article 9 of the Covenant (pages 27 to 31 of the report), he noted that Italian criminal anti-terrorist legislation included some measures which might endanger human rights, such as very long and sometimes indefinite time-limits for pre-trial detention in custody. A reading of the Report might give the impression that such detention went beyond what was reasonable and that it might undermine the judicial values accepted by Italy under the Covenant. It should be determined whether that might not create a situation incompatible with the provisions of article 4, paragraph 2 of the Covenant, which prohibited derogation from certain specified rights. The countries of Latin America which were only too familiar with such problems, were interested in knowing whether, in the European part of the world, the struggle against terrorism might also lead certain governments to encroach upon the exercise of human rights.

40. Referring to article 8 of the Covenant (pages 23 to 26 of the report), he took up the point of the penal establishments known as "farm colonies" and wanted some details of the way in which they were organized.

41. In connection with article 18 of the Covenant (pages 43 to 47 of the report), he would like to know which churches were subsidized from the "tax revenue obtained from all citizens who possess taxable income" and the special fund devoted to worship and whether there was any discrimination in the allocation of subsidies among the different churches. Further clarification was also needed of the provisions of article 8 of the Constitution, which stated that "religions other than the Catholic religion ... have the right to organize according to their own statutes, in so far as they are not in contrast with Italian law", so that the Committee might judge whether religious freedom in Italy was indeed complete.

42. In connection with article 19 of the Covenant (pages 46 and 47 of the report), he would like to know how the jurisprudence defined slander of the Republic or constitutional institutions.

43. In connection with article 25 of the Covenant (pages 56 to 59 of the report), it would be useful to know what "electoral offences" entailed loss of the right to participate in public affairs.

44. Finally, article XIII of the Italian Constitution prohibited members of the House of Savoy from ingressing into Italian territory and from participating in the country's political life. It would seem that such a measure could only be justified by the existence of a real threat to the Italian Republic and he would like to know whether such a threat still existed.

45. Mr. TARNOPOLSKY drew attention to the many specific instances in which the Government of Italy had given evidence of its readiness to help protect human rights through its unqualified accession to the relevant international instruments and said he wished to stress the important role played by the Interministerial Committee on Human Rights within the country. He was pleased with the quality and size of the Italian delegation, which was evidence of Italy's interest in the Committee's work. He also welcomed the suggestions made by the Government of Italy in paragraphs 114 and 115 of its report, which were a timely reminder that the Committee's work was not the property of its members but of direct concern to the entire international community. Finally, he supported Mr. Tomuschat's comments on article 36 of the Covenant because he too thought that the Secretary-General had been unable to provide the Committee with all the means it required to perform its tasks effectively.

46. In connection with article 2 of the Covenant (pages 10 to 13 of the report), he noted that articles 17 and 18 of the Constitution limited the right of association to citizens and therefore excluded migrant workers, who could never associate in order to promote their own interests. He would like information on the legislation concerning naturalization and on any difference which might exist in the status of Italians by birth and naturalized Italians. He noted with satisfaction that article 3 of the Constitution adopted the interpretation of article 26 of the Covenant - the only proper one, in his view - according to which the legislation of States parties must not only combat any discrimination by the State against citizens but also that which citizens might practice against other citizens.

47. In connection with article 3 of the Covenant, he noted that a few professions, such as the military and police forces, were still barred to women because of their specialized and dangerous nature (paragraph 17 (b) of the Report). The question might nevertheless arise as to why a woman had greater need to be protected against danger than did a man. Any inequality between men and women of access to a profession which was based on so specious an argument as danger was inadmissible, and could not but be prejudicial to women. He wondered whether there was any administrative or other body which helped women to get rid of the discriminatory measures of which they were still victims in Italy.

48. He was unable to accept the interpretation of the scope of article 4 of the Covenant given in paragraph 19 of the report. As he saw it, no derogation from the obligations under the Covenant was possible unless a public emergency threatened the life of the nation and was officially proclaimed, and the exceptions referred to in articles 12, 14, 18, 19, 21 and 22 of the Covenant were certainly not derogations. He wished to know if Italian legislation made provision for emergencies other than those resulting natural disasters and for other restrictions on the rights set forth in the Covenant beyond the exceptions provided for in the instrument itself and the derogations authorized in article 4.



49. As for articles 7 and 10 of the Covenant, he would like to know whether or not solitary confinement was authorized, and if so, in what circumstances, for how long and for what reasons. Referring to article 8 of the Covenant, he associated himself with the many questions which had already been asked, particularly regarding paragraphs 37 and 38 of the Report. He would like to know in particular what was meant by the expression "measure of detentive security" in paragraph 38 of the Report. He also joined Mr. Sadi in disagreeing with the interpretation given in the Report of cases in which forced labour could be imposed.

50. Referring to article 12 of the Covenant, he endorsed Mr. Tomuschat's comments, particularly with regard to paragraph 55 of the Report, when taken in conjunction with paragraph 102 (b).

51. As for article 18 of the Covenant, he shared the views of Mr. Prado Vallejo and Mr. Koulishév regarding the status of the churches, but disagreed with Mr. Tomuschat. Preferential treatment for one group, even if it did not violate article 18 of the Covenant, certainly violated article 26. The fact that a provision was not directed against a group did not mean that it did not constitute a discriminatory measure against it. He wondered why all religions should not be treated on an equal footing, and why it was necessary for the law to regulate their relations with the State on the basis of agreements with their representatives.

52. As for article 19 of the Covenant, he wished simply to know to what extent restrictions on freedom of expression with regard to words and gestures constituting slander of the flag or other State emblems could be justified, and whether they were really a threat to national security, public order, public health or morals. Referring to paragraph 80 of the Report, he wondered what were the cases of absolute urgency in which the press could be seized and in what circumstances. The 24-hour time-limit provided for in article 21, paragraph 4 of the Constitution, in which seizure must be approved or revoked by the judicial authorities, seemed much too long.

53. Finally, with regard to article 21 of the Covenant, he wished to know what limitations on the right to peaceful assembly were authorized by Italian legislation and to what extent they were compatible with that article.

54. Mr. BOUZIRI commended the Government of Italy for the extremely high level of its delegation and for the quality of its Report, which was noteworthy for its legal rigour and for the information it contained on legislation that was in many ways advanced and which also included some interesting suggestions for the Committee's consideration.

55. He was gratified to note the initiative taken by the Government of Italy in establishing an Interministerial Committee on Human Rights - the composition of which was most judicious - thereby manifesting its desire to strengthen and uphold the exercise of human rights in Italy. He also noted, from part I of the Report (General Remarks), that, under article 134 of the Constitution of the Italian Republic, the Constitutional Court was responsible for ensuring the constitutionality of laws and of acts having the force of law. He wondered who was entitled to bring a matter before the Court: any citizen, whether a national or an alien, the Government

or Parliament. He inquired whether the fact that two-thirds of the members of the Court were appointed by political organs, namely, by the Head of State and the two chambers of Parliament, and only one-third by the jurisdictional organs, judicial and administrative, did not entail some risk of a questionable appointment or of encroachment on the independence of the Court. Lastly, if a provision in the Covenant on which no interpretative declaration or reservation had been made conflicted with a corresponding provision of domestic law, it might be assumed that the court hearing the case would tend to recognize the supremacy of the Covenant (first subparagraph of paragraph 5 of the Report), but he wondered what the position would be if that were not the finding, even on appeal.

56. Turning to part II of the Report, which dealt with the application of the various articles of the Covenant, he said that he was pleased to note that the Government of Italy had given full weight to article 1 of the Covenant, and in particular to paragraph 3 thereof, and that it had been the first to state its position, spontaneously and clearly, on such serious matters as colonialism in various parts of the world and the refusal of the right to self-determination which was being encountered, in particular, by the Namibian and Palestinian people.

57. The information provided in connection with article 3 of the Covenant attested to the significant progress made in Italy in recent years with regard to the equality of men and women before the law. Some de facto discrimination against women did, of course, exist and it was clear from the figures given in the Report that women still played a very modest part in the political, economic and administrative life of the country. He would therefore like to know whether there were any female presiding judges, ambassadors, etc. However, the right of spouses to refer to the court any disagreement between them regarding matters pertaining to family life did not seem to him to be a good solution. He did not see why there should not be a head of family.

58. With regard to article 6 of the Covenant, he noted that capital punishment still existed in Italy, but that it could not be applied to minors under 18 years of age and that sentence was deferred if the convicted person was a pregnant woman. He asked whether, if a minor committed a crime punishable by death before he was 18 years of age and if he reached that age before he was convicted, he would be executed or not. Furthermore, he thought it would be cruel to execute a woman sentenced to capital punishment after her delivery, thus depriving the child of its mother. He noted that the provisions relating to the voluntary termination of pregnancy were still extremely strict and that they infringed, perhaps on religious grounds, the woman's freedom in that connection which it was essential to respect.

59. With regard to article 9 of the Covenant, it would be useful to have further information on the duration of detention in custody by the police and of pre-trial detention. Also, he did not understand what was meant by "compensation" in the case of judicial error. If a person who had been detained for a long time by the police, the examining magistrate and the court was subsequently acquitted, it was not clear whether he was entitled to compensation for the material and moral prejudice suffered, as should normally be the case.

60. Article 13 of the Covenant prompted a somewhat unusual question which also related to article 8. It concerned foreigners who worked without a permit; some did so in Sicily on fishing boats, for example, and were extremely badly paid for a very hard job. He would like to know what the Italian authorities were doing to deal with such situations.

61. With regard to trial guarantees (article 14 of the Covenant), the Report submitted by Italy stated (in the second subparagraph of paragraph 60) that hearings before the courts were public under pain of being declared void "except for reasons of State security, public order or morals". Those were rather vague concepts, the definition of which could vary from country to country, and he wondered how Italian law avoided abuses. As to the composition of juvenile courts (page 40 of the Report), he would like to know what was meant by citizens who "have made outstanding contributions to social service activities".

62. Article 22 of the Italian Constitution, which was mentioned in connection with the application of article 16 of the Covenant, provided that: "No one may be deprived of his legal status, his citizenship, or his name for political reasons". He inquired whether there were any cases where loss of nationality was prescribed as a penalty.

63. With regard to protection against interference in private life (article 17 of the Covenant), the Report of the Government of Italy stated (paragraph 72) that disturbance by means of the telephone was punishable by law. He would like to know how that provision was applied in Italy and whether it was necessary to go to court. In Tunisia, when private individuals suffered harassment by means of the telephone, or even if they simply received telephone bills for an amount that seemed to them unwarranted, they had merely to ask the Minister of Posts and Telegraphs, in a personally-delivered handwritten letter, to place their telephone under surveillance. He wondered what was the procedure applied in Italy.

64. The Report stated that the Constitution laid down the fundamental principle of freedom of religion and that all religious faiths were equally free before the law (paragraphs 74 and 75). He asked whether proselytism was allowed, whether propaganda in favour of atheism was permitted, whether any utterances were considered to be blasphemous and, if so, whether blasphemy was punishable.

65. He asked whether there were any limitations on the freedom of opinion and expression (article 19 of the Covenant) so far as foreigners were concerned. Restrictions on the freedom of expression, concerning more specifically words and gestures, were listed in paragraph 81 of the Report. He wondered whether Italian law placed any restriction on the freedom of expression as it related to the use of "seditious language" - a very nebulous concept.

66. With regard to freedom of association and trade union freedom (article 22 of the Covenant), the Report stated (last subparagraph of paragraph 92) that a bill relating to the demilitarization of the public security forces and the possibility of forming internal and autonomous unions had been tabled in the Chamber of Deputies. He wished to congratulate the Italian Government on that measure: the adoption of such a law would be a significant step forward.

67. With regard to the provisions relating to the application of article 23 of the Covenant, he noted that the report never used the word "divorce" preferring instead the expression "dissolution of marriage" which, though legally correct, denoted a certain reticence. The Report stated (second subparagraph of paragraph 93) that dissolution of marriage was permitted in the case of an uninterrupted judicial separation of at least five years. That was a major advance on the prohibition on divorce, which had been the rule until the Law of 1970, but such a restrictive provision was not in the interest of the family: spouses who were separated but not divorced, and thus could not remarry, might have children whose situation would be a difficult one.

68. With regard to the protection of children (article 24 of the Covenant), he was pleased to note that Italian law granted the same protection to all children, whether legitimate or natural, and guaranteed the equality of legitimate and natural children in the matter of inheritance.

69. Italy covered areas and provinces that were unequal in terms of wealth, and he was concerned about the effects which that regional imbalance might have on the economic and social rights of the people, which had an influence on civil and political rights. The Government of Italy had, of course, already done a great deal to reduce such disparities, which could not disappear in a few years. He would, however, like to know what measures the Italian Government had taken, with a view to strengthening civil and political rights, to improve the situation further in the most deprived areas.

70. Mr. OPSAHL said that he joined in the well-deserved praise that had been addressed to the Government of Italy for the quality of its report which, quite apart from making a highly important contribution of substance, invited the Committee to review certain organizational aspects of its work and made some useful suggestions in that connection. In fact, with the establishment in 1977 of an Interministerial Committee on Human Rights, Italy had done more at the national level as far as organization was concerned than the Committee had at the international level.

71. He was able to endorse most of the questions asked, particularly by Mr Graefrath and Mr. Tarnopolsky regarding the Report of Italy.

72. On the basis of his experience as a member of the European Commission of Human Rights, he had been able to compare the system of reports submitted by States parties under article 40 of the Covenant and the system of petitions provided for by the European Convention on Human Rights and had noted that the system of reports afforded a greater opportunity of raising questions of principle, in other words, of considering whether the laws and practices of a country were compatible with a particular legal instrument; under the petitions system, only individual cases of violations of human rights were considered and they did not necessarily involve the most important questions of principle.

73. With regard to the provisions relating to the application of article 6 of the Covenant, he joined with Mr. Tomuschat in asking whether some of the crimes listed in the first subparagraph of paragraph 26 of the report (surrender, desertion, cowardice in the face of the enemy) were really so extremely serious, but he had another comment, of a historical character to add: the crimes in question were formulated by the Military Code, which dated from 1941 and consequently derived from a Fascist régime. He thought it regrettable that the Committee should have to consider concepts which had been defined and applied by a régime that had committed numerous violations of human rights. He would like to have an explanation of the position of the Government of Italy regarding the legal provisions which had been adopted by the Fascist régime but which were still in force although a democratic constitution had been adopted. It was, incidentally, a problem which other countries besides Italy had had to solve.

74. There was another example of the retention of legal provision dating back to the Fascist régime: in paragraph 57 of the Report, which related to the expulsion of foreigners, reference was made to the 1931 Public Security Laws. Admittedly, the Report did state (fourth subparagraph of paragraph 5) that, where a particular provision of the Covenant on which no interpretative declaration or reservation had been made conflicted with the corresponding provision of domestic law, it could be assumed that the court would tend to apply the Covenant. In his view, however, the most probable outcome was that there would be a partial conflict, in certain areas or in regard to certain categories of persons, between the human rights Covenant and a given provision of domestic law.

75. With regard to article 9 of the Covenant, he could agree that special measures, such as those enacted by the 1975 Law and supplemented by the 1980 Law (paragraph 41 of the report), might be necessary to combat terrorism. He would, however, like to know to what extent the provisions under those laws could be applied not only to acts of terrorism but also to ordinary offences and whether the guarantees afforded to a person deprived of his liberty had been reduced in a general way or solely in cases of terrorism.

76. The duration of the period of pre-trial custody in Italy was the subject of concern, and had been brought to the attention of the European Commission of Human Rights. He would like to know whether there were many cases of persons who had been released after a lengthy period in custody without there having been any trial, owing to lack of evidence, for example. The Government did indicate (last subparagraph of paragraph 46 of the Report) that there were moral and social requirements involved in the question of custody pending trial. Surely there was also a legal requirement. Even though in the Guzzardi case (which was not primarily concerned with the length of custody) the European Court of Human Rights had made no finding against the Italian Government, the question of principle was none the less raised. He would like to know whether the Italian authorities had taken measures and allocated the necessary funds to expedite the investigation in cases of terrorism.

77. Again with reference to the right to liberty and security of the person (article 9 of the Covenant), he would like to have further information about the reasons, other than the criminal reasons, which could lead to a deprivation of liberty. He wanted to know how the guarantees under article 9 of the Covenant were implemented by Italian law in areas such as those covered by the laws on mental health, border controls and vagrancy, for instance. He would also like to know how the Italian Government envisaged the concept of deprivation of liberty as such. There was, of course, deprivation of liberty when a person was imprisoned or placed in an institution against his will; but it was unclear what the position was, for example, in the case of enforced residence in a town far away from the home of the person concerned or of transfer to an island which had no means of communication with the outside world. That was the essence of the Guzzardi case, to which he had already referred and which he, like Mr. Tomuschat, considered, could be raised under article 12 (freedom of movement and residence), article 14 (trial guarantees) and article 25 (participation in public life) of the Covenant. He also considered that it could be raised under article 9.

78. He was not convinced that the position of children born out of wedlock was entirely favourable and would like to have some information in that connection. No doubt they had important rights under Italian law (paragraph 98 of the report) when they were recognized and/or adopted by their father or mother; but he would like to know what was the position of children born out of wedlock who were not recognized by their parents, and in particular by their father. Under article 24 of the Covenant, they were entitled, to the protection of their family. He wondered to what extent those guarantees were assured in practice under Italian law.

79. In connection with the provisions relating to article 20 of the Covenant, the Report stated (last subparagraph of paragraph 84) that "the hypothesis of religious hatred in Italy is completely theoretical". Unfortunately, there had recently been outbreaks of religious hatred in a number of countries and he wondered, therefore, what was the basis for the statement in that subparagraph.

80. In regard to prostitution, he had to admire the realism of the Report, which dealt with the matter in connection with article 8 of the Covenant (slavery, servitude and forced labour). The Report by the Government of Italy was the first to adopt that attitude. That particular problem did, however, raise a question of principle: whether the Covenant should be deemed to impose obligations on individuals or to impose on States the obligation to protect the individual against the practices of other individuals. The same question arose in connection with freedom of association and trade union freedom (article 22 of the Covenant). He would like to know whether the Covenant imposed duties on employers or, in more general terms, if one of the effects of the Covenant, in Italian law, was also to oblige individuals to respect the human rights set forth in the Covenant.

81. Mr. DIEYE, stressing the exemplary character of the Report, said that he merely wished to raise a few points for clarification. First, he would like to know what specific measures the Government of Italy had adopted in order to expedite, either within the United Nations or outside it, the democratization process in South Africa since it was not enough to condemn the policy of apartheid. Secondly, apart from affirming the interdependence of economic, social and cultural rights and civil and political rights, he wondered what commitments the Italian Government had entered into within the context of the institution of the new international economic order. Lastly, he asked how the independence of judges was guaranteed in the context of a system of appointments which, at all levels, depended almost entirely on the executive.

The meeting rose at 6.30 p.m.